IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition 8307 of 2005

Lugade B Parashuram ..Petitioner
vs
Ghorpade U Shivaji and ors..Respondents

Mr U P Warunjikar for petitioner
Mr.S.D.Dharmadhikari for respondents

CORAM: S.U.KAMDAR J.

Dated 2l.l2.2005

P.C:

. The present petition is challenging the order dated 2l.l0.2005 passed by the Civil Judge S.D.Sangli on Exh 42 for amendment of the plaint. By virtue of the proposed amendment averments which are sought to be added are that the application for probate is not maintainable as necessary and proper parties are not joined thereof. While considering that application for amendment to the probate petition, the learned Judge has gone into the merits of the case which is not permissible. However apart from that the learned Judge has not considered why the amendment should not be granted. In my opinion the amendment should be granted. The issue whether the petitioner will succeed on merits on the averments made in the added para l3 of the application would be determined at the time of

trial of the main petition. It cannot be determined now in the amendment application. Hence the impugned order is quashed and set aside. Application Exh 42 is granted. Petitioner is permitted to add para l3 to the probate petition pending before the trial court within two weeks from today and the matter to proceed therefrom. It is made clear that the issue on merits whether a person is necessary or property party or not is to be determined by the trial court at the final hearing of the probate petition.

. Petition is disposed of accordingly with no order as to costs.